No. 05-1240

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IN THE

Supreme Court of the United States

ANDRE WALLACE,

Petitioner,

v.

CHICAGO POLICE OFFICERS KRISTEN KATO AND EUGENE ROY,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE NATIONAL LEAGUE OF CITIES, NATIONAL ASSOCIATION OF COUNTIES, U.S. CONFERENCE OF MAYORS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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QUESTION PRESENTED

When does a claim for damages arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment accrue when the fruits of the search were introduced in the claimant's criminal trial and he was convicted?

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include municipal governments and officials throughout the United States.[1] *Amici* have a compelling interest in the development of clear rules to govern the fundamentals of section 1983 litigation, including the rules that govern the accrual of causes of action, such as petitioner's damages claim for false arrest.

When this Court decided the closely related question of the proper statute of limitations for section 1983 claims, it emphasized "the federal interest in uniformity and the interest in having 'firmly defined, easily applied rules.'" *Wilson v. Garcia*, 471 U.S. 261, 270 (1985) (citation omitted). "A federal cause of action 'brought at any distance of time,'" the Court said, "would be 'utterly repugnant to the genius of our laws,'" not least because "[j]ust determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost." *Id.* at 271 (citation omitted). Moreover, the Court noted that those courts "that have predicated their choice of the correct statute of limitations on analysis of the particular facts of each claim" had used an approach that "inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purposes of § 1983." *Id.* at 272.

Certainty and clear rules are no less vital for litigants and the courts in determining the accrual of false arrest and other search and seizure claims. The court of appeals properly accommodated these concerns when it ruled that false arrest claims accrue at the time of arrest. Because of the importance of this question to the fair and effective litigation of section

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[1] The parties have consented to the filing of this *amicus* brief and their letters of consent have been filed with the Clerk. This brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amici* or their members made a monetary contribution toward its preparation or submission.

1983 claims such as those of petitioner, *amici* respectfully submit this brief to assist the Court in the resolution of this case.

SUMMARY OF ARGUMENT

The Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), does not require any departure from the traditional federal rule that an action for false arrest accrues at the time of arrest. *Heck* is best read as embracing a general rule that false arrest damages claims do not necessarily imply the invalidity of a conviction, that section 1983 false arrest damages actions "should be allowed to proceed, in the absence of some other bar to the suit," *id.* at 487 (footnote omitted), and that federalism issues that may be raised by the filing of federal civil rights cases while state proceedings are ongoing are to be resolved as a matter of comity.

An alternative reading of *Heck*, directing courts to make case-by-case, fact-specific determinations whether an arrest implies the invalidity of a conviction, and consequently delaying the accrual of selected false arrest actions until a conviction is set aside, imposes a needless and costly burden on federal courts and litigants. Delayed accrual based on the facts of the case is "at odds with the basic policies of all limitations provisions," *Rotella v. Wood*, 528 U.S. 549, 555 (2000), and "breeds uncertainty and time-consuming litigation that is foreign to the central purposes of § 1983." *Wilson v. Garcia*, 471 U.S. 261, 272 (1985).

1. In "the normal run of cases, in which the Fourth Amendment violation affects only the evidence that might or might not be presented to the trier of fact," Pet. App. 14, *Heck* is best read as establishing a general rule that claims for damages arising out of a false arrest do not "necessarily" imply the invalidity of a conviction. There is, then, no reason to depart from the clear, well-settled rule that an action for false arrest accrues at the time of arrest.

Heck identified "a suit for damages attributable to an allegedly unreasonable search" as an example of a section 1983 damages action that "even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment" and that "should be allowed to proceed, in the absence of some other bar to the suit." 512 U.S. at 487 & n. 7 (footnote omitted). The Court explained that "even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction," success on the merits of an unreasonable search claim "would not *necessarily* imply that the plaintiff's conviction was unlawful" because of "doctrines like independent source and inevitable discovery, and especially harmless error." *Id.* at 487 n. 7 (citations omitted).

The Court's focus on "the importance of the term 'necessarily,'" *Nelson v. Campbell*, 541 U.S. 637, 647 (2004), supports reading *Heck* for the general rule that damages claims arising out of a false arrest or other prohibited seizure do not imply the invalidity of a conviction. The absence of probable cause is, to be sure, a starting point for arguments that the fruits of an arrest are tainted, that the tainted fruit is inadmissible, and that the tainted fruit would be critical to a conviction. A finding of no probable cause, however, does not "necessarily," inevitably, or unavoidably imply that a conviction is invalid. *See Heck*, 512 U.S. at 487 n. 7; *cf. Webster's Third New International Dictionary of the English Language, Unabridged* 1510 (Phillip Babcock Gove ed., 1976) ("necessarily" means "inevitably, unavoidably").

Because *Heck* teaches that damages for false arrest do not "necessarily" go to the validity of conviction, there is no need for any mechanism—delayed accrual or otherwise—to police the intersection of a section 1983 damages action for false arrest and habeas corpus because there is no interference. Damages for false arrest do not go to the validity of a conviction and do not implicate any requirement "to resort to

state litigation and federal habeas before § 1983." *Muhammad v. Close*, 540 U.S 749, 751 (2004) (per curiam). Although a section 1983 damages action for false arrest does not interfere with federal habeas corpus, it may raise, as *Heck* anticipated, other significant federalism issues. *Heck* specifically stated that a section 1983 action "should be allowed to proceed" only "in the absence of some other bar to the suit" and carefully noted that concerns about comity, and in particular avoidance of parallel federal and state court proceedings, may require abstention. 512 U.S. at 487 & n. 8.

2. Case-by-case consideration of the relationship of a false arrest claim to a possible conviction creates significant problems that are obviated by reading *Heck* as embracing a general rule that false arrest damages claims do not necessarily imply the invalidity of a conviction. Under the case-by-case approach, courts must make fact-specific determinations of whether success on the merits of a claim that an arrest was made without probable cause would necessarily invalidate a conviction. If a successful false arrest claim does not imply the invalidity of a conviction, the action accrues at arrest, but if success on the merits of the claim does imply the invalidity of a conviction, the action accrues when the conviction is set aside.

Faced with such uncertainty, prudent lawyers will always file actions for false arrest based on the presumption that the action accrues at the time of arrest. To file a section 1983 action after a conviction is set aside would run the risk that the court will decide that a successful false arrest claim did not imply the invalidity of the conviction, that the action in fact accrued at arrest, and that if the limitations period has run, some variant of equitable tolling—an exceptional doctrine—will be necessary to preserve the section 1983 action.

Delayed accrual of false arrest actions conflicts with the fundamental "policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's

opportunity for recovery and a defendant's potential liabilities." *Rotella*, 528 U.S. at 555. Petitioner's case was filed more than nine years after his arrest, and "[j]ust determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost." *Wilson*, 471 U.S. at 271. Statutes of limitations in section 1983 actions are at least as long as two years in all but four states and Puerto Rico, and afford plaintiffs ample time to present their claims. Petitioner's false arrest claim accrued at the time of arrest, and his section 1983 complaint advanced a claim that he could have asserted within Illinois's two-year limitations period.

Because a statute of limitations does not begin to run until an action accrues, a rule that would delay accrual beyond the time of arrest is inconsistent with legislative judgments about "the proper balance between the policies of repose and the substantive policies of enforcement." *Wilson*, 471 U.S. at 271.

ARGUMENT

I. A SECTION 1983 CLAIM FOR DAMAGES FOR FALSE ARREST ACCRUES AT THE TIME OF ARREST

A Fourth Amendment claim for damages arising out of false arrest does not implicate any requirement under *Heck v. Humphrey*, 512 U.S. 477 (1994), "to resort to state litigation and federal habeas before § 1983" because it "threatens no consequence for [a prisoner's] conviction or the duration of his sentence." *Muhammad v. Close*, 540 U.S. 749, 751-52 (2004) (per curiam). Although a finding of no probable cause for arrest might be "a necessary element to a likely challenge to a conviction," *Heck*, 512 U.S. at 488 (internal citation and quotation marks omitted), it would not be a sufficient element to support invalidation of a conviction. A determination in a section 1983 damages action whether an arrest or other

seizure is prohibited by the Fourth Amendment does not "necessarily" entail any determination whether the fruits of an allegedly unconstitutional arrest or search may be used in a state prosecution, much less whether a conviction is valid. *Id.* at 487, 488.

Thus, even if an arrest or other seizure leads to a statement or other evidence that is introduced in a section 1983 claimant's criminal trial and the claimant is convicted, "success on the merits" of a section 1983 challenge to the lawfulness of an arrest "would not '*necessarily* imply that the plaintiff's conviction was unlawful.'"[2] *See Nelson v. Campbell*, 541 U.S. 637, 647 (2004) (quoting *Heck*, 512 U.S. at 487 n. 7); *cf. Webster's Third New International Dictionary of the English Language, Unabridged* 1510 (Phillip Babcock Gove ed., 1976) (defining "necessarily" as "in such a way that it cannot be otherwise: of necessity: INEVITABLY, UNAVOIDABLY").

The court of appeals correctly recognized that *Heck* does not require either a case-by-case, individualized determination whether a particular arrest implies the invalidity of a conviction or any departure from the clear rule that an action for false arrest accrues at the time of arrest. Instead, *Heck* teaches that a section 1983 claim for damages arising out of

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[2] The question presented is: "When does a claim for damages arising out of a false arrest or other search or seizure forbidden by the Fourth Amendment accrue when the fruits of the search were introduced in the claimant's criminal trial and he was convicted?" This question addresses "the normal run of cases, in which the Fourth Amendment violation affects only the evidence that might or might not be presented to the trier of fact." Pet. App. 14. It does not raise, and this brief does not address, the narrow class of cases in which the asserted Fourth Amendment violation is "an element of the offense" of which a section 1983 claimant has been convicted. *See Heck*, 512 U.S. at 487 n. 6 (resisting arrest). In such circumstances, this Court has held that the section 1983 action "will not lie" unless and until the conviction is set aside. *Id.*

an arrest prohibited by the Fourth Amendment, which is filed within the applicable period of limitations from the time of arrest, "should be allowed to proceed, in the absence of some other bar to the suit." 512 U.S. at 487 (footnote omitted); *see also Edwards v. Balisok*, 520 U.S. 641, 649 (1997) ("[A]bsent some other bar to the suit, a claim [that] is cognizable under § 1983 . . . should immediately go forward . . . .").

A. Federal Law Provides that an Action for False Arrest Accrues at the Time of Arrest

Although federal law borrows state statutes of limitations and tolling principles, federal law governs directly the question of accrual of actions for constitutional torts under section 1983. *See Hardin v. Straub*, 490 U.S. 536, 538-44 (1989); *Wilson v. Garcia*, 471 U.S. 261, 266-71 (1985). Federal courts "generally apply a discovery accrual rule," which "start[s] the clock when a plaintiff knew or should have known of his injury." *Rotella v. Wood*, 528 U.S. 549, 553, 555 (2000). The cause of action accrues when the plaintiff knows of the injury, not when the full consequences of that injury are felt. *See, e.g., Delaware State Coll. v. Ricks*, 449 U.S. 250, 258 (1980); *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (per curiam); *see also* 1C Martin A. Schwartz, *Section 1983 Litigation: Claims and Defenses* § 12.4, at 10 (3d ed. 1997) ("[T]he overwhelming number of § 1983 accrual decisions speak in terms of knowing or reason to know of injury, not that federal rights have been violated.").

Under the federal injury discovery accrual rule, a claim for damages arising out of false arrest accrues at the time of arrest, and, at least before this Court's decision in *Heck*, there was no dispute on this point. *See, e.g., Rose v. Bartle*, 871 F.2d 331, 350-53 (3d Cir. 1989) (action for false arrest accrues at time of arrest); *accord McCune v. City of Grand Rapids*, 842 F.2d 903, 906 (6th Cir. 1988); *Venegas v. Wagner*, 704 F.2d 1144, 1146 (9th Cir. 1983); *Singleton v.*

City of New York, 632 F.2d 185, 191 (2d Cir. 1980); *Rinehart v. Locke*, 454 F.2d 313, 315 (7th Cir. 1971). When a person's Fourth Amendment rights have been allegedly violated by an arrest without probable cause, the injury occurs at the time of the arrest, and "damages for that claim cover the time of detention up until issuance of process or arraignment, but not more." *Heck*, 512 U.S. at 484 (quoting W. Keeton et al., *Prosser & Keeton on Torts* 887-88 (5th ed. 1984)).

B. *Heck* Does Not Require Any Departure from the Clear and Settled Rule that an Action for False Arrest Accrues at the Time of Arrest

Congress has provided "two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983." *Muhammad*, 540 U.S. at 750. In policing the intersection of these avenues, the Court "has focused on the need to ensure that state prisoners use only habeas corpus (or similar state) remedies when they seek to invalidate the duration of their confinement" either directly through an injunction or indirectly through a damages action. *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005).

There is, however, no need for any mechanism—delayed accrual or otherwise—to police the intersection of a section 1983 damages action for false arrest and habeas corpus because, put simply, there is no interference. Damages for false arrest do not go to the validity of a conviction and do not implicate any requirement "to resort to state litigation and federal habeas before § 1983."[3] *Muhammad*, 540 U.S. at

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[3] There is a second reason why damages for false arrest do not implicate any requirement to resort to habeas corpus. Federal habeas corpus does not lie for claims based on violations of the Fourth Amendment "where the State has provided an opportunity for full and fair litigation" of such claims. *Stone v. Powell*, 428 U.S. 465, 482 (1976). Because federal

752. Although a section 1983 damages action for false arrest does not interfere with federal habeas corpus and its "policy . . . that state courts be given the first opportunity to review constitutional claims bearing upon state prisoners' release from custody," *see Heck*, 512 U.S. at 488 n. 9, a section 1983 damages action for false arrest may raise, as *Heck* anticipated, other important federalism issues. *Heck* specifically stated that a section 1983 action "should be allowed to proceed" only "in the absence of some other bar to the suit" and carefully noted that concerns about comity, and in particular avoidance of parallel federal and state court proceedings, may require abstention. *Id.* at 487 & n. 8.

1. *A Successful False Arrest Action Does Not Necessarily Imply the Invalidity of a Conviction*

Because "[c]hallenges to the validity of any confinement or . . . its duration are the province of habeas corpus," *Muhammad*, 540 U.S. at 750, *Heck* carefully distinguished a section 1983 damages action that "would necessarily imply the invalidity of [a] conviction or sentence" from a damages action that "even if successful, would not *necessarily* imply that the . . . conviction was unlawful." 512 U.S. at 487 & n. 7. On the one hand, if a damages action would necessarily imply the invalidity of a conviction, the action "must be dismissed unless the [section 1983 claimant] can demonstrate that the conviction or sentence has already been invalidated."

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habeas corpus is not available for Fourth Amendment claims, a section 1983 action for damages for false arrest in violation of the Fourth Amendment cannot implicate any need to resort to this federal remedy. *See Muhammad*, 540 U.S. at 751, 755 (prisoner's section 1983 action "raised no claim on which habeas relief could have been granted" so "conditioning the right to bring a § 1983 action on a favorable result in state litigation or federal habeas [did not] serve[] the practical objective of preserving limitations on the availability of habeas remedies").

Id. at 487. On the other hand, a damages action that does not necessarily imply the invalidity of a conviction "should be allowed to proceed, in the absence of some other bar to the suit." *Id.* (footnote omitted).

Heck is best read as embracing a general rule that claims for damages arising out of a false arrest or other seizure prohibited by the Fourth Amendment do not necessarily imply the invalidity of a conviction. *See Gerstein v. Pugh,* 420 U.S. 103, 119 (1975) ("[T]he established rule [is] that illegal arrest or detention does not void a subsequent conviction."); *see also Haring v. Prosise*, 462 U.S. 306, 322 (1983) (Fourth Amendment claim [for illegal search] "is irrelevant to the constitutionality of . . . criminal conviction"). *Heck* specifically explained that Fourth Amendment damages claims for an illegal search do not necessarily imply the invalidity of a conviction and that such damages actions should be allowed to proceed in the absence of some other bar to the suit. *Heck* also addressed, and rejected, an argument that a section 1983 damages action should not be allowed to proceed if judgment in the section 1983 action would resolve a "necessary element," like probable cause, of "a likely challenge to a conviction." 512 U.S. at 488 (internal citation and quotation marks omitted).

Support for the foregoing reading of *Heck* is found first in *Heck's* discussion of "a suit for damages attributable to an allegedly unreasonable search." *Id.* at 487 n. 7. The Court identified such a suit as an example of a section 1983 damages action that "even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment," and that "should be allowed to proceed, in the absence of some other bar to the suit." *Id.* at 487 (footnote omitted). The Court explained that "even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction," success on the merits of an unreasonable search claim "would not

necessarily imply that the plaintiff's conviction was unlawful" because of "doctrines like independent source and inevitable discovery, and especially harmless error." *Id.* at 487 n. 7 (citations omitted).

In a recent decision the Court explained that it was "careful in *Heck* to stress the importance of the term 'necessarily.'" *Nelson v. Campbell*, 541 U.S. 637, 647 (2004). It repeated and reaffirmed *Heck's* example of a section 1983 damages action for an illegal search that, even if successful, would not necessarily demonstrate invalidity of a criminal conviction and that "should be allowed to proceed, in the absence of some other bar to the suit":

> [W]e acknowledged that an inmate could bring a challenge to the lawfulness of a search pursuant to § 1983 in the first instance, even if the search revealed evidence used to convict the inmate at trial, because success on the merits would not "*necessarily* imply that the plaintiff's conviction was unlawful."

Id. at 647 (citing *Heck*, 512 U.S. at 487 n. 7).

The Court's focus on the importance of the term "necessarily" supports reading *Heck* as embracing a general rule that claims for damages arising out of a false arrest or other seizure prohibited by the Fourth Amendment do not imply the invalidity of a conviction.[4] A finding that there is

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[4] There would seem to be no reason that the rule—stated in *Heck* and repeated in *Nelson*—that damages for a *search* allegedly prohibited by the Fourth Amendment do not imply the invalidity of a conviction should not also include a suit for damages attributable to an *arrest* allegedly prohibited by the Fourth Amendment. A court in a civil action can decide that an individual was subjected either to an illegal search or to an illegal arrest without reaching the issue whether the evidence found or confession obtained should be excluded from the criminal trial and without making any additional determination about the effect of excluding evidence on the validity of a conviction. Indeed, because damages for false arrest as well as damages for illegal search do not include damages for conviction or

no probable cause for an arrest or for a search is logically incapable of necessarily demonstrating that a conviction is invalid. A finding of no probable cause may be a necessary—but not sufficient—element to support a determination that a conviction is invalid. The absence of probable cause, of course, is the starting point for arguments that the fruits of an arrest or search are tainted by the violation of the Fourth Amendment, that the tainted fruit is inadmissible, and that the tainted fruit would be critical to a conviction. A finding of no probable cause by itself, however, does not "necessarily" imply that a conviction is invalid because there must be other, intervening determinations such as "no attenuation," "no inevitable discovery," or "no harmless error." *See Heck*, 512 U.S. at 487 n. 7 (noting doctrines such as inevitable discovery, independent source, and harmless error).

Although the absence of probable cause may lead to a challenge to the validity of a conviction, and be an element of that challenge, *Heck* expressly rejected an argument that "[e]xhaustion of state remedies should be required . . . not just when success in the § 1983 damages suit would necessarily show a conviction or sentence to be unlawful, but whenever judgment in a § 1983 action would resolve a necessary element to a likely challenge to a conviction, even if the § 1983 court [need] not determine that the conviction is invalid." *Heck*, 512 U.S. at 488 (internal quotation marks omitted). Though probable cause for arrest may be a necessary element to a challenge to a conviction, the action "should be allowed to proceed" because a determination in a section 1983 damages action whether an arrest or other seizure is prohibited by the Fourth Amendment does not "necessarily" entail any determination whether the fruits of an

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incarceration, *see infra* at 15, a section 1983 court in an action for damages for false arrest or for illegal search has no occasion to consider whether the fruits of that arrest are tainted or whether there would have been a conviction absent admission of the fruits of an illegal arrest.

allegedly unconstitutional arrest or search may be used in a state prosecution, much less whether a conviction is valid. *Id.* at 487, 488.

2. *Federalism Issues Raised by a Section 1983 Damages Action for False Arrest are Addressed as a Matter of Comity and Not by Departures from Settled Rules of Accrual*

Although *Heck*, as the court below held, clearly supports a general rule that claims for damages arising out of a false arrest or other seizure prohibited by the Fourth Amendment do not necessarily imply the invalidity of a conviction, other courts have made case-by-case determinations about the relationship of false arrest claims to convictions. *See Gibson v. Superintendent of N.J. Dep't of Law & Pub. Safety Div. of State Police*, 411 F.3d 427, 448-49 (3d Cir. 2005) (Fuentes, J., pt. III.A. majority opinion) (noting the "two dominant approaches" to the question of whether accrual of Fourth Amendment claims is deferred under *Heck*, and "the general trend among the Courts of Appeals has been to employ the fact-based approach"), *cert. denied*, 126 S.Ct. 1571 (2006).

This creates an unworkable rule. If these courts conclude —on the basis of either a prediction about the possible course of a state criminal proceeding or a retrospective review thereof—that a particular false arrest claim would not or did not necessarily imply the invalidity of conviction, then that false arrest action accrues at arrest. If, however, the court concludes that a particular false arrest claim would or did necessarily imply the invalidity of a conviction, then that false arrest action accrues when conviction is invalidated.

Even if this case-by-case approach were a plausible reading of *Heck*, the consequence of this approach—delayed accrual of some false arrest actions—finds little support in that case. Delayed accrual, moreover, ignores *Heck's* prescription that the federalism issues raised by the direction that certain 1983

damage actions "proceed" should be resolved as a matter of comity. *See Heck*, 512 U.S. at 487 & n. 8; *Balisok*, 520 U.S. at 649. Most importantly, delayed accrual comes at a very high cost to fundamental policies underlying well-settled rules of accrual and statutes of limitations.

Delayed accrual of false arrest actions finds little support in *Heck*, which—far from marking any departure from traditional rules of accrual—simply applied the normal accrual rule for actions seeking damages for conviction and confinement: such actions accrue when the conviction is set aside. In *Heck*, the Court held that a section 1983 action for damages arising from conviction and confinement was analogous to the common-law action for malicious prosecution, which "permits damages for confinement imposed pursuant to legal process." 512 U.S. at 484. On the facts presented,[5] the Court adopted as the federal accrual rule the same rule that applies to an action for malicious prosecution:

> Just as a cause of action for malicious prosecution does not accrue until the criminal proceedings have terminated in the plaintiff's favor, so also a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated.

Heck, 512 U.S. at 489-90 (citations omitted).

There is, however, no analogy between an action under section 1983 for damages for conviction and confinement, at issue in *Heck*, and an action for damages for arrest without probable cause. An action for damages for arrest without probable cause is analogous to a common-law action for false

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[5] Heck alleged that prosecutors and a police investigator "had engaged in an 'unlawful unreasonable, and arbitrary investigation' leading to [his] arrest; 'knowingly destroyed' evidence 'which was exculpatory. . .'; and caused 'an illegal and unlawful voice identification procedure' to be used at [his] trial." 512 U.S. at 479.

arrest, and *Heck* expressly recognized that a false arrest action seeks damages not for conviction and confinement, but for "the time of detention up until issuance of process or arraignment, but not more."[6] *Id.* at 484 (internal quotation marks and citation omitted). Damages for false arrest can be awarded entirely apart from damages that might be available for conviction and confinement. *See id.* at 487 n. 7. False arrest damages for the period from arrest to first legal process can be awarded even if there is no criminal proceeding or no conviction and confinement.

Heck applied the normal accrual rule for actions seeking damages for conviction and confinement; it provides no warrant for changing the rule of accrual for other actions, like false arrest, that seek damages unrelated to conviction and confinement. Instead of altering accrual rules, *Heck* anticipated that federalism issues—raised by its direction that section 1983 damages actions that do not necessarily imply the invalidity of a conviction "should be allowed to proceed in the absence of some other bar to the suit," 512 U.S. at 487 (footnote omitted)—would be addressed as a matter of comity.

The federalism issue raised by a section 1983 damages action that does not imply the invalidity of a conviction, like a false arrest claim, is not interference with federal habeas corpus and exhaustion of state remedies. *Heck* makes clear that a false arrest damages action does not implicate any requirement "to resort to state litigation and federal habeas before § 1983" because it "threatens no consequence for [a prisoner's] conviction or the duration of his sentence." *Muhammad*, 540 U.S. at 751. The federalism issue posed by

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[6] Confining damages for a false arrest cause of action to this period does not leave a section 1983 plaintiff without adequate remedies for post-arraignment constitutional violations. *See Heck*, 512 U.S. at 484 (damages available to "a successful malicious prosecution plaintiff").

Heck's directive that the section 1983 action "should be allowed to proceed" is the possibility of parallel federal civil and state criminal or civil proceedings.

Heck cautions generally that section 1983 actions—such as actions for illegal search and false arrest—that do not imply the invalidity of a conviction "should be allowed to proceed" only "in the absence of some other bar to the suit." 512 U.S at 487 & n. 8. It points specifically to abstention as the answer to the potential problems of parallel federal and state court proceedings:[7] "if a state criminal defendant brings a

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[7] In addition to the possibility of parallel federal and state court proceedings, which are to be addressed as a matter of comity, section 1983 false arrest damages actions may raise concerns about avoiding different outcomes in federal and state proceedings and avoiding collateral attacks on criminal convictions through a civil suit. *See Heck*, 512 U.S. at 484 (noting that accrual of malicious prosecution action after conviction is set aside (1) "avoids parallel litigation," (2) "precludes the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction," and (3) avoids a "collateral attack on the conviction through the vehicle of a civil suit").

A section 1983 false arrest action is not a collateral attack on a conviction because damages for an arrest made without probable cause do not "necessarily" imply the invalidity of a conviction. *See supra* at 9-13. *Heck* contemplated a risk of some inconsistency between findings on issues like probable cause because it declined to adopt a "broader" rule that "[e]xhaustion of state remedies should be required . . . not just when success in the § 1983 damages suit would necessarily show a conviction or sentence to be unlawful, but whenever 'judgment in a § 1983 action would resolve a necessary element to a likely challenge to a conviction, even if the § 1983 court [need] not determine that the conviction is invalid." 512 U.S. at 488. *Heck* also contemplated that if a section 1983 court did not abstain and a civil rights action proceeded before state proceedings were complete, any inconsistency in findings, on issues like probable cause, as opposed to inconsistent outcomes or resolutions, would be permissible given "court-made preclusion rules." *Id.* at 487 n. 9 (preclusion rules can "take account of the policy embodied [in the

federal civil-rights lawsuit during the pendency of his criminal trial, appeal, or state habeas action, abstention may be an appropriate response to the parallel state-court proceedings." 512 U.S. at 487 n. 8. The criteria for abstention in the face of pending state trial, state appeal, or state post-conviction proceedings are beyond scope of the question presented. Two points, nonetheless, are worth noting. First, abstention criteria will be an issue regardless of whether *Heck* is read as embracing a general rule that false arrest actions "proceed" because they do not necessarily imply the invalidity of a conviction or as countenancing a case-by-case approach under which some, but not all, false arrest damages actions "proceed." Second, abstention may well take into account the differences (and possible conflict) between discovery in a section 1983 civil action and discovery in a criminal proceeding. *See Degen v. United States*, 517 U.S. 820, 825-26 (1996) (discussing difficulties in discovery created by concurrent civil and criminal litigation). Delayed accrual thus serves no purpose that is not better served by a clear rule that a false arrest action accrues at arrest and that a section 1983 false arrest damages action "shall proceed" unless comity requires abstention.

II. A BRIGHT-LINE RULE THAT A CLAIM FOR DAMAGES FOR FALSE ARREST ACCRUES AT THE TIME OF ARREST ENSURES PREDICTABILITY AND AVOIDS TIME-CONSUMING LITIGATION

A clear rule that a claim for damages for false arrest accrues at the time of the arrest is far preferable to a variable

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exhaustion requirements of the habeas corpus statute] that state courts be given the first opportunity to review constitutional claims bearing upon state prisoners' release from custody"). To the extent that other circumstances might present some risk of inconsistent findings, they are also appropriately addressed under abstention and preclusion principles.

rule of accrual, which is the product of case-by-case determination whether a particular arrest implies the invalidity of a conviction. Such case-by-case determinations and delayed accrual of some but not all claims are "at odds with the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Rotella*, 528 U.S at 555. Case-by-case determination of accrual of false arrest actions, like case-by-case "analysis of the particular facts of each claim" to select a statute of limitations, "inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purposes of § 1983." *Wilson v. Garcia*, 471 U.S. at 272.

A. A Clear Rule of Accrual Relieves Federal Courts From Making Case-by-Case Predictions About the Relationship of Arrests to Convictions

In the absence of a clear rule that a damages action for false arrest does not imply the invalidity of a conviction, some courts have undertaken a case-by-case consideration of the relationship of false arrest claims to a possible conviction. Under this approach, a false arrest damages action does not accrue until the conviction is set aside if a court makes an individualized determination that a finding of no probable cause for arrest would necessarily imply the invalidity of a conviction. *See Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998) ("[o]n these facts" a finding of no probable cause would imply the invalidity of the conviction, so the "false arrest and imprisonment claims were not cognizable and did not accrue" until the conviction was invalidated). Conversely, a false arrest damages action accrues at the time of the arrest if there is a case-specific determination that a finding of no probable cause for arrest would not necessarily imply the invalidity of a conviction. *See Gibson*, 411 F.3d at 449-50 (*Heck* "requires a fact-based

inquiry" and "in some cases Fourth Amendment claims for false arrest begin to accrue at the time of arrest").

Faced with this uncertainty, a prudent lawyer or pro se plaintiff will file a section 1983 damages action for false arrest within the limitations period after the time of the arrest. Then, depending on the progress of state criminal proceedings at the time of the filing, the court in which the section 1983 action is filed will be forced to make either a prediction or a retrospective determination about the relation of an arrest to a conviction—a determination that would be entirely unnecessary under a general rule that false arrest damages actions do not imply the invalidity of a conviction and that such actions "should be allowed to proceed in the absence of some other bar to the suit." *Heck*, 512 U.S. at 487.

A prudent lawyer will not run the risk of filing a section 1983 false arrest damages action after a conviction is set aside and will, instead, file the action within the limitations period after an arrest. To do otherwise would risk that the court will decide that false arrest damages do not imply the invalidity of a conviction. In that event, the false arrest action will have accrued at the time of arrest. If the limitations period for a false arrest claim has run before the conviction is set aside, the lawyer may have resort to some variant of equitable tolling, although equitable tolling is "the exception, not the rule." *Rotella*, 428 U.S. at 561.

To avoid this risk, lawyers will take the much safer course of filing a section 1983 damages action within the period of limitations after the arrest. A court will then have to make a prediction whether false arrest damages imply the invalidity of a conviction. If the court predicts that false arrest damages imply the invalidity of the conviction, the false arrest action will accrue when the conviction was set aside, and the section 1983 action will be dismissed, presumably without prejudice. If, on the other hand, the court predicts that damages for false arrest do not imply the invalidity of a conviction, then the

false arrest action will have accrued at the time of arrest, and the 1983 action will proceed "in the absence of some other bar to the suit." *Heck*, 512 U.S. at 487.

A judicial prediction whether a section 1983 damages action for false arrest would, or would not, imply the invalidity of a conviction is, as the court below recognized, an uncertain and difficult matter. Pet. App. 12 ("*ex ante* it is not readily apparent which criminal cases might proceed despite the consequences of the successful Fourth Amendment challenge"). The section 1983 court must predict the outcome of a state criminal prosecution. It must predict first whether there is probable cause, and then, assuming that it predicts that an arrest or search is invalid because there was no probable cause, it must predict whether success on the false arrest action would necessarily imply the invalidity of the conviction. This second level of prediction will require a judicial determination whether a statement or other evidence is inadmissible as the tainted fruit of illegal arrest or search or whether it is otherwise admissible under such doctrines as independent source, inevitable discovery, and harmless error. *See Heck*, 512 U.S. 487 n. 7.

A prediction whether the fruits of an arrest or search are admissible because they are sufficiently attenuated from unconstitutional conduct is difficult because it "must be answered on the facts of each case." *Brown v. Illinois*, 422 U.S. 590, 603 (1975); *see* J.A. 27-34 (Illinois Appellate Court's determination under *Brown* that Wallace's statement was not sufficiently attenuated from his illegal arrest to be admissible). The difficulties of the predictions that a section 1983 court must make under the case-by-case approach are suggested by consideration of just one of the doctrines—harmless error—that may support a determination that a particular arrest does not imply the invalidity of a conviction.

With respect to the harmless error doctrine, one prominent commentator has observed that, under the case-by-case

approach, a determination whether a particular arrest would imply the invalidity of a conviction may "turn on a rather delicate analysis of the harmless error rule or some variant of it . . . ." Richard H. Fallon, Jr. et al., *Hart and Wechsler's The Federal Courts and the Federal System* 1450 (5th ed. 2003). This observation is well-taken. A prediction whether it is harmless error to admit a statement or other evidence, which is the fruit of an arrest or search made without probable cause, is difficult because it is fact-intensive. *See United States v. Lane*, 474 U.S. 438, 448 (1986) ("In the final analysis judgment in each case must be influenced by conviction resulting from examination of the proceedings in their entirety, tempered but not governed in any rigid sense of *stare decisis* by what has been done in similar situations.") (quoting *Kotteakos v. United States*, 328 U.S. 750, 762 (1946); 3B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 854, at 461-62 (3d ed. 2004) (in determining harmless error courts necessarily must look to the circumstances of the particular case and decisions in other cases are only of limited value). A clear rule that false arrest actions accrue at arrest relieves federal courts of the burdens of making fact-specific preliminary determinations about the relationship of an arrest to a conviction.

B. Delayed Accrual of False Arrest Actions Conflicts with the Fundamental Purposes of Statutes of Limitations

In addition to unnecessary litigation over accrual issues, a determination under the case-by-case approach that a false arrest action accrues only after a conviction is set aside "would bar repose, prove a godsend to stale claims, and doom any hope of certainty in identifying potential liability." *Rotella*, 528 U.S. at 559. Statutes of limitations provide repose, foster accurate fact-finding, and promote judicial efficiency. Decisions that delay or extend accrual interfere with legislative judgments about the proper balance of these

interests and enforcement of substantive policies, and they cause significant problems "on a human level." *Wilson*, 471 U.S. at 275 n. 34 ("On a human level, uncertainty about [limitations periods] is costly to all parties.").

Statutes of limitations are "statutes of repose," which "represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (internal quotation marks omitted). Statutes of limitations, however, are not only provisions "assur[ing] potential defendants that after the expiration of a given period they will not be subject to defend against judicially asserted claims." 1 Calvin W. Corman, *Limitation of Actions* § 1.1, at 8 (1991).

Statutes of limitations also promote the search for the truth: "Just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost." *Wilson*, 471 U.S. at 271; *see also Board of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 487 (1980) (statutes of limitations promote "the accuracy of the fact-finding process"). Moreover, statutes of limitations promote judicial efficiency. *See, e.g.*, Corman, § 1.1, at 16 ("Judicial efficiency is the reward when these statutes produce speedy and fair adjudication of the rights of the parties" and promote "[c]ertainty and finality in the administration of affairs").

At bottom, statutes of limitations, which "are found and approved in all systems of enlightened jurisprudence," *Kubrick*, 444 U.S. at 117 (internal citation and quotation marks omitted), reflect a careful legislative balancing of important interests:

> [A]lthough affording plaintiffs what the legislature deems a reasonable time to present their claims, they protect defendants and the courts from having to deal

> with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.

Id. Thus, in borrowing state statutes of limitations for personal injury as the rule for section 1983 civil rights actions, this Court observed that "federal law incorporates the State's judgment on the proper balance between the policies of repose and the substantive policies of enforcement embodied in the state cause of action." *Wilson*, 471 U.S. at 271.

Because a statute of limitations does not begin to run until an action accrues, a rule that would delay accrual beyond injury discovery interferes with judgments about the proper balance of repose, accuracy of fact finding, judicial efficiency, and enforcement of substantive policies. In *Rotella*, for example, the Court recognized that delayed accrual would interfere with policies underlying a four-year statute of limitations that it had previously adopted for RICO actions. 528 U.S. at 553. It compared "an injury discovery accrual rule starting the clock when a plaintiff knew or should have known of his injury" with "an injury and pattern discovery rule . . . under which a civil RICO claim accrues only when the claimant discovers, or should discover, both an injury and a pattern of RICO activity." *Id.*

The Court rejected the injury and pattern discovery rule, a departure from the traditional federal accrual rule of injury discovery, because the delay in accrual and consequent extension of the period of limitations was "at odds with the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Id.* at 555; *see also id.* at 554 (noting that the Court had previously rejected another extended rule of accrual in RICO actions because "[p]reserving a right of action for . . . a vast stretch

of time would have thwarted the basic objective of repose underlying the very notion of a limitations period") (citing *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997)).

Accrual of a section 1983 action is a matter of federal law, and application of the rule that a false arrest action accrues at the time of the arrest—the traditional federal injury discovery accrual rule—is consistent with respect for legislative judgments about "the proper balance between the policies of repose and the substantive policies of enforcement." *Wilson*, 471 U.S. at 271. The case-by-case approach – delayed accrual of some false arrest actions until a conviction is set aside—upsets this balance.

The problems created by delayed accrual are more than systemic. The Court has recognized that "[o]n a human level, uncertainty [about the limitations period] is costly to all parties." *Id.* at 275 n. 34. As the Court explained:

> Plaintiffs may be denied their just remedy if they delay in filing their claims, having wrongly postulated that the courts would apply a longer statute. Defendants cannot calculate their contingent liabilities, not knowing with confidence when their delicts lie in repose.

Id. Just as uncertainty about the limitations period causes problems on the human level, so does uncertainty about accrual because a limitations period does not begin to run until the action accrues.

This case—with the passage of more than nine years from Wallace's arrest to the filing of his section 1983 action—illustrates the problems of delayed accrual for defendants. Police officers make many arrests during one year and an untold number in the course of their careers. *See* U.S. Dept. of Justice Federal Bureau of Investigation, *Crime in the United States 2005* tbl. 29, *available at* http://www.fbi.gov/ucr/05cius/index.html (for 29 offenses for which data is collected, there were an estimated 14,094,186 arrests in the

United States in 2005). Absent accrual of an action for false arrest at the time of arrest, police officers will not have timely notice or an opportunity to preserve evidence for a defense, and the governmental entities that employ police officers will not be able to calculate their contingent liabilities for indemnification and other costs of a judgment against the officer.

The passage of nine years will obviously make it difficult for officers to "defend against claims for which necessary evidence may no longer be available, memories may have faded, or important witnesses may have disappeared." Corman, § 1.1, at 11-12. The rule that a false arrest action accrues at the time of the arrest "protect[s] defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise." *Kubrick*, 444 U.S. at 117. It also "afford[s] plaintiffs . . . a reasonable time to present their claims," *id.*, which in all but four states and Puerto Rico is at least two years.[8]

As this case illustrates, civil rights plaintiffs should be able to file section 1983 actions within two years of arrest, or earlier if required by the applicable statute of limitations. Wallace filed a motion to quash his arrest and suppress

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[8] According to one comprehensive listing, the statute of limitations in section 1983 actions in Illinois, 21 other States, and Guam is two years. The statute of limitations is one year in four States and Puerto Rico. Fourteen States and the District of Columbia have three-year periods of limitations; four States have a four-year statute of limitations; one State has a five-year period of limitations; and three States and the Virgin Islands have a six-year period of limitations. 1C Martin A. Schwartz, *Section 1983 Litigation: Claims and Defenses* § 12.9, at 45-57 (3d ed. 1997 & Supp. 2003-1 § 12.9, at 685-88). Although the statutes of limitations applied in two States, New Hampshire and South Carolina, are not included in this compilation, the limitations period for personal injury actions in these States is three years. *See* N.H. Rev. Stat. § 508:4; S.C. Code 1976 § 15-3-535.

evidence on August 18, 1994, just one day short of seven months after he was arrested. Supp. App. 57.[9] Although the motion to quash contained few details, it did allege a lack of probable cause. *Id.* at 58. Moreover, the hearings on this motion, which were held between April 26, 1995 and January 18, 1996, show that Wallace had sufficient information to file his section 1983 false arrest action well within two years of his arrest. *See* J.A. 7-11 (Op. of Ill. App. Ct.). In short, when Wallace initiated his section 1983 action more than nine years after his arrest, his complaint, Supp. App. 1, and amended complaint, Supp. App. 16, advanced claims that he could have asserted well prior to the expiration of the limitations period.

C. Accrual of False Arrest Actions at the Time of Arrest Avoids Uncertainty and Time-Consuming Litigation That is Foreign to the Central Purposes of Section 1983

The Court has frequently recognized the importance of jurisdictional tests that are clear, easily applied, and lead to predictable results. *See Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 582 (2004); *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 547 (1995); *see also* Charles Alan Wright, *The Federal Courts – a Century After Appomattox*, 52 A.B.A. J. 742, 745 (1966) (jurisdictional line between federal and state courts "should be bright and clear, so that judicial time is not wasted on cases brought in the wrong court"); *cf. Atwater v. City of Lago Vista*, 532 U.S. 318, 345-54 (2001) (Fourth Amendment is not well served by case-by-case determinations and there is an "essential interest in readily administrable rules").

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[9] References to "Supp. App." are to the Supplemental Appendix of Plaintiff-Appellant Andre Wallace filed in the court of appeals (7th Cir. No. 04-3949).

Clarity and certainty are equally important in other matters—like accrual—that go to the initiation of an action. A clear rule that false arrest actions accrue at the time of arrest avoids the uncertainty of case-by-case predictions whether a particular arrest was made without probable cause and whether it would imply the invalidity of a conviction. Such a clear rule also avoids uncertainty that would interfere with "an effective remedy for the enforcement of federal civil rights" under section 1983, *Wilson*, 471 U.S. at 275, and spares federal courts time-consuming and fact-intensive litigation over accrual issues.

For these reasons, in determining the statute of limitations for section 1983 actions, the Court has rejected a fact-specific approach:

> The experience of the courts that have predicated their choice of the correct statute of limitations on an analysis of the particular facts of each claim demonstrates that their approach inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purposes of § 1983.

Id. at 272. A clear, bright-line rule that a section 1983 damages action for false arrest accrues at arrest is "consistent with the assumption that Congress intended the identification of the appropriate statute of limitations to be an uncomplicated task for judges, lawyers, and litigants, rather than a source of uncertainty, and unproductive and ever-increasing litigation." *Id.* at 275; *see Owens v. Okure*, 488 U.S. 235, 247 (1989) ("[O]ur task today is to provide courts with a rule for determining the appropriate personal injury limitations statute that can be applied with ease and predictability in all 50 States.").

Statutes of limitations begin to run from the accrual of the cause of action, and if the day of accrual is unclear, the period of time within which the action must be filed is equally unclear. Just as the Court has rejected a fact-specific ap-

proach to the statute of limitations for section 1983 actions, it should reject a fact-specific approach to determining when these actions accrue.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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